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September 14, 2006

VIA FEDERAL EXPRESS

Mary L. Cottrell, Secretary of the Department
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

**Re: DTE 06-56; Petition for Arbitration of Charter Fiberlink MA-CCO, LLC
Pursuant to 47 U.S.C. § 252(b)**

Dear Secretary Cottrell:

Enclosed please find Charter Fiberlink MA-CCO, LLC's Reply to Verizon's Appeal of Arbitrator's ruling denying Verizon's motion to dismiss in the above referenced proceeding.

If you have any questions about this matter please contact me at the telephone number listed above. Thank you.

Sincerely,



K.C. Halm

Counsel for Charter Fiberlink MA-CCO, LLC

cc: Carol Pieper, Arbitrator
DTE 06-56 Service List

**BEFORE THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition of Charter Fiberlink MA-CCO, LLC
for Arbitration of an Amendment to the
Interconnection Agreement Between Verizon-
Massachusetts, Inc. and Charter Fiberlink MA-
CCO, LLC Pursuant to Section 252 of the
Communications Act of 1934, as Amended

D.T.E. No. 06-56

**CHARTER FIBERLINK MA-CCO, LLC REPLY TO
VERIZON APPEAL OF
ARBITRATOR'S RULING DENYING VERIZON'S MOTION TO DISMISS**

Pursuant to the Hearing Officer's direction and 220 C.M.R. § 1.06(d)(3) Charter Fiberlink MA-CCO, LLC ("Charter") hereby files its reply to the appeal of Verizon New England, Inc. d/b/a Verizon ("Verizon") of the Arbitrator's ruling ("Appeal") denying Verizon's motion to dismiss Charter's arbitration petition. Charter opposes Verizon's Appeal and asks the Department to affirm the Arbitrator's ruling that this arbitration may proceed.

I. INTRODUCTION

Verizon moved to dismiss this arbitration proceeding on the grounds that the issues Charter had identified for arbitration – and on which the parties plainly disagree – were not really “unresolved.” Verizon could not support its claim with any writing from Charter agreeing to any resolution of any of the affected issues, nor could it (or did it) claim that Charter representatives had orally agreed that the issues were resolved. The Arbitrator denied Verizon's motion. Verizon now asks the Department to reverse the Arbitrator's ruling. In so doing Verizon repeatedly makes unsupported and misleading

assertions to the effect that Charter had agreed to close or resolve the issues identified in its petition. Based upon these deceptive and untrue statements Verizon asks the Department to overrule and reverse the Arbitrator's ruling.

Verizon's unsupported assertions are absolutely false. Charter never agreed to resolve or close the issues identified in its petition, and Verizon offers no proof otherwise. Verizon's entire argument is based upon the false assumption that the exchange of unexecuted draft contract language constitutes an agreement or assent by one or both parties to Verizon's position on the issues raised by such contract language. This contention is without merit and defies conventional standards of how entities negotiate these types of agreements.

The Arbitrator's ruling clearly recognizes that Verizon's unsupported assertions are just that: unverified statements about the supposed state of negotiations between the parties. Recognizing that the issues identified by Charter must be deemed open issues under both 47 U.S.C. § 252(b) and several federal district court decisions construing that statute, the Arbitrator properly ruled that Verizon's motion to dismiss must fail, and that the issues identified in Charter's petition must be arbitrated. For these same reasons, the Department should deny Verizon's appeal and affirm the Arbitrator's ruling denying Verizon's motion to dismiss.

II. BACKGROUND

In its Appeal Verizon repeatedly claims that Charter agreed to close or resolve issues during negotiations, but fails to produce *any* evidence that Charter did so. It would seem a simple matter to produce a letter or email signed or sent by a Charter representative stating that some set of issues were "settled" or "agreed upon" or

“resolved” or “no longer in dispute.” Verizon has produced no such documentation because none exists. Instead, Verizon relies solely on the draft contract language that the parties exchanged at several times prior to the initiation of this proceeding. Verizon baldly asserts that the draft language sent by Charter represented Charter’s “final proposed” amendment and constituted Charter’s agreement on all of Verizon’s *other* proposed language in the draft document.

These statements are simply not true. Charter never finally agreed to resolve or close the issues now before the Department. Verizon would have the Department believe that Charter’s attempts to negotiate contract language with Verizon, in part by exchanging draft documents with proposed revisions, constituted a final acceptance of all language not specifically addressed in a particular draft. But Verizon’s suggestion that Charter’s draft contract language proposals should be construed in that fashion misleads the Department and ignores the reality of the parties’ negotiations.

In fact, Charter negotiated, in good faith, with Verizon to resolve the open and disputed issues identified in its petition and now before the Department. As Verizon admits, Charter and Verizon spent many months negotiating the language for a proposed fiber meet amendment. (Verizon Appeal at 2). Over the course of repeated telephone conferences, Charter stated its disapproval of the key components of Verizon’s proposal, including: Verizon’s attempt to place conditions on Charter’s ability to request a fiber meet arrangement; Verizon’s proposed letter of credit/guarantee requirements for fiber meets that don’t have a DS3’s worth of traffic; Verizon’s attempt to impose distance limitations on the location of the fiber meet; Verizon’s attempt to limit the types of traffic to be exchanged over the fiber meet arrangement; and, a variety of technical issues

associated with the planned fiber meet arrangements. Charter repeatedly argued that the parties' planned amendment should not include these concepts, or that such concepts should be altered dramatically.

In an effort to bridge these disputes, and in an attempt to negotiate in good faith, Charter reviewed, considered, and offered revisions to certain contract language that Verizon had proposed. In fact, the parties exchanged several drafts in an attempt to formulate contract language that was acceptable to both parties. This effort failed, however, and the parties never agreed upon a final draft contract amendment. Contrary to Verizon's assertions, Charter never told Verizon that it would accept certain portions of Verizon's proposed language. Charter never told Verizon that it considered certain open issues closed or resolved. To the contrary, throughout the time that the parties were negotiating Charter's counsel repeatedly expressed concerns with the concepts proposed by Verizon.

In fact, prior to filing the petition for arbitration initiating this proceeding Charter's counsel spoke with Verizon's counsel, Mr. Pachulski, and explained Charter's continued concerns with Verizon's proposal. Charter's counsel verbally informed Mr. Pachulski of the possibility that Charter would seek arbitration of the open issues. In response to that notice, Mr. Pachulski did not claim that the issues were closed or resolved. Instead, he simply stated that he would hope the parties could work out the issues and asked for a continued dialogue on the unresolved issues. However, *after* Charter filed its petition, Verizon *then* claimed that the issues were resolved and that Charter had "renege" on the resolution of issues.

The fact is, Charter never agreed to resolve or close issues with Verizon, and instead continued to explain its concern with such proposals right up until the day that Charter filed for mediation (and later arbitration) with the Department.

Verizon ignores these facts and instead focuses exclusively on the draft contract language provided to Verizon by Charter on March 16, 2006. Verizon suggests that Charter's delivery of draft contract language constituted Charter's "final proposed" amendment and that any contract language not modified by Charter in that draft represented Charter's decision to accept Verizon's proposed contract language. But Verizon offers *no evidence* that Charter proffered that draft language in such a way, or that Charter intended the draft language to be construed as such. Indeed, the reason that Verizon offers no proof that this was indeed Charter's "final proposed" amendment is because there is no basis to so conclude. Charter never told Verizon that this was its "final proposed" amendment. Nor did Charter agree to accept all of the other language in the amendment that was not affected by the proposed revisions offered by Charter in that draft.

It is important to keep in mind that throughout these negotiations Verizon has insisted that Charter work from Verizon's proposed contract language. Thus, in order to raise and address the disputed issues Charter was required to review, consider, and offer revisions to Verizon's language. Charter did just that, and its review and consideration of Verizon's proposed contract language demonstrates Charter's good faith efforts to attempt to resolve the open issues with Verizon. Those efforts do not, however, mean that Charter somehow "accepted" Verizon's language, or that the Department should construe Charter's actions in the way Verizon suggests. To the contrary, Charter should

be credited with having agreed to work with Verizon's draft amendment and attempting to seek acceptable modifications thereto.

III. ARGUMENT

A. The Arbitrator's Ruling Properly Concludes That the Issues Identified in Charter's Filings Were Open Issues Subject to Arbitration

Verizon asks the Department to overturn the Arbitrator's ruling based upon inaccurate and unsupported claims about the nature of the open/unresolved issues between the parties. Specifically, Verizon misleads the Department by making unsupported and demonstrably false claims that the parties had already resolved and "closed" the issues listed in Charter's petition.

In its Appeal Verizon states that the draft contracts exchanged between Verizon and Charter "reflected Charter's agreement on the contract language" (Appeal at 3), "reflect the parties' agreement on the language in those sections." (*Id.*); and that "the Parties had thus agreed on and closed all of these issues ... by their exchange of nearly identical contract language." (*Id.* at 4.) Verizon also states that during negotiations neither party withdrew its proposed contract language "or indicated that the issues were open ..." (*Id.*) Based upon these false claims Verizon argues that Charter "renege[d]" on agreements reached during negotiations in order to create open issues. Verizon also argues that Charter asks the Department to arbitrate issues that were never discussed.

Verizon takes issue with the Arbitrator's decision that the issues identified by Charter were open, unresolved issues subject to arbitration. (Appeal at 6). In her ruling the Arbitrator noted that Verizon had proffered no evidence to support its assertions that the issues identified by Charter were actually resolved, and that absent such evidence it

was reasonable to conclude that the issues identified in Charter's petition were open, unresolved issues. (Arbitrator's Ruling at 4-5).

Although Verizon takes issue with these decisions it fails to offer *any* evidence that the parties resolved, or closed the issues identified in Charter's petition. Verizon's entire argument on this point is based upon the false presumption that by exchanging contract language with Verizon, Charter intended to communicate its assent and agreement to the open issues during negotiations. But Verizon's myopic view of the significance of the parties' exchange of contract language ignores the parties' continued and repeated discussions during negotiations, and Charter's repeated explanations of its concern and disapproval of Verizon's proposals.¹

Verizon's repeated assertions that the issues raised in Charter's petition were "closed" or "resolved" by the parties during negotiations is belied by Verizon's own actions leading up to the filing of the petition. In fact, prior to making her ruling the Arbitrator was made aware of the sequence of events, described below, leading up to the filing of the petition. Charter presented the same evidence outlined below to the Arbitrator in its opposition to Verizon's motion to dismiss. That evidence is in the form of a timeline which demonstrates, clearly and convincingly, that Verizon was well aware of the fact that Charter considered the issues identified in its petition as unresolved and "open."

¹ Verizon's contentions are also contrary to basic logic. If Charter had, in fact, agreed to resolve or close the disputed issues, as Verizon claims, Charter would have no incentive to then go back and try to arbitrate the same issues it had agreed were resolved. Verizon never squares this basic point with its repeated claims that Charter agreed to resolve issues identified in its petition.

1) The Arbitrator Correctly Ruled That the Issues In Charter's Petition Are Open Issues, and Verizon's Own Statements Demonstrate That It Understood Such Issues to be "Open" and Unresolved Issues

Verizon's repeated assertions that Charter agreed to Verizon's proposed contract language are simply not true. Charter never finally agreed to Verizon's proposed contract language and the parties never finally resolved the issues identified in Charter's petition. Tellingly, Verizon offers *no evidence* that Charter did accept Verizon's proposed resolution of these issues (or its proposed contract language).

Surely if the Parties had agreed to resolve these issues, or had agreed to finalize disputed contract language, there would be some evidence of the alleged agreement. There would, presumably, be an e-mail, letter, or some other form of correspondence stating that one party "accepts", "agrees to", "concedes to" or otherwise consents to the other Party's position or language. But Verizon offers no proof of any such agreement to support its Motion.

The reason that Verizon offers no such proof is, of course, that there never was an agreement or acceptance of the disputed issues identified in Charter's petition. Instead, the issues remained unresolved during the course of negotiations between the Parties. Indeed, the issues remained unresolved all the way up to the time that the Department attempted to mediate unresolved issues on June 20, 2006 (just three days before Charter filed its request for arbitration). The fact that these issues remained unresolved is stated clearly in the e-mail correspondence attached as Exhibits 1 and 2 to Verizon's Response.

Notably, Exhibit 1 to Verizon's Motion to Dismiss contains an e-mail from Charter's negotiator dated March 16, 2006 stating that the e-mail is transmitting Charter's "further *proposed revisions*." See Verizon Exhibit 1 (3/16/06 e-mail from K. Halm to J.

Pachulski) (emphasis added). This communication makes clear that as of March 16th there was no agreement on the unresolved issues because Charter was proposing further revisions to the draft contract.

The next substantive communication between the Parties came on April 14, 2006, when Verizon negotiator Jim Pachulski e-mailed Charter negotiator K.C. Halm to explain that Verizon “completed reviewing our [Verizon’s] *draft counterproposal*” and that the same was being sent to Verizon’s legal department for review. *See* Exhibit 2 to Verizon’s Motion to Dismiss (4/14/06 e-mail from J. Pachulski to K. Halm) (emphasis added). Thus, as of April 14th there was no meeting of the minds, and no agreement on the unresolved issues, because Verizon was proposing further revisions to the draft contract.

The next substantive communication between the Parties occurred approximately three weeks later on May 8, 2006, when Charter negotiator K.C. Halm e-mailed Verizon negotiator Jim Pachulski to inform Verizon that because the Parties had “made *no progress*” (i.e. had not resolved the disputed issues) on the fiber meet negotiations, Charter would be asking the Department to mediate the “*unresolved issues.*” *See* Exhibit 2 to Verizon’s Motion to Dismiss (e-mail string between J. Pachulski and K. Halm) (emphasis added). If Verizon in good faith believed that the issues had been resolved, it would surely have objected to Charter’s email: “Wait. Haven’t we resolved everything? What is there to mediate?” Instead, Verizon responded to that e-mail on the same day by sending Charter yet another “*revised draft*” of the fiber meet amendment. *See id.* Accordingly, as of May 8th there can be no doubt that there remained unresolved issues: Charter clearly stated so in its e-mail, and Verizon responded by offering a “revised

draft” of the amendment. Clearly neither Party believed at that time that the issues were resolved.

Following this exchange, on May 8, 2006 Charter filed a request for mediation and asked the Department to mediate the “disputed issues” that had arisen in negotiations between Charter and Verizon. *See* Charter Mediation Request Letter at 1 and 2 (filed May 8, 2006) (attached hereto as Charter Exhibit 1) (Charter requests “mediation of disputed issues ...” and “Mediation is necessary here because the Parties cannot agree on several important questions.”).

On May 22, 2006 Verizon filed a response to Charter’s request for mediation. In its response, Verizon did not object to the mediation or assert that all or most issues had been resolved. Instead, Verizon informed the Department of several “principal issues *in dispute*.” *See* Verizon Response to Charter Mediation Request at 1 (filed May 22, 2006) (emphasis added). Moreover, Verizon discusses these issues in dispute under the heading of “Unresolved Issues.” *See id.* at 3 (attached hereto as Charter Exhibit 2). Therefore, as of May 22nd Verizon clearly understood that unresolved issues remained pending between Charter and Verizon.

Following this filing, the next substantive communication between the Parties occurred on June 20, 2006, when a Department-designated mediator convened a mediation session to attempt to resolve the disputed issues that – as just noted – both parties had identified. Verizon’s negotiator Jim Pachulski and in-house counsel Alex Moore both participated in the mediation session. During the mediation session, Verizon never claimed that the unresolved issues raised during mediation were closed or that Charter had already agreed to those issues. Instead, Verizon offered repeated arguments

in support of its proposed resolution of these issues on the merits. Nor did Verizon ever claim that Charter had “reneged” on its agreement by seeking mediation. There is no way to rationally view Verizon’s participation in the mediation session as anything other than a plain acknowledgment that Verizon understood the issues to be “open.” Thus, at the time of the mediation session held on June 20, 2006, the Parties’ own statements and actions clearly demonstrate that there were open, unresolved issues pending in the draft fiber meet amendment.

Three days later, on June 23, 2006, Charter filed its petition for arbitration. There were no substantive communications between the Parties in those intervening three days. Certainly, during that period, Charter did not indicate in any way that it had agreed to Verizon’s proposed resolution of these issues or proposed contract language. Given that the parties had no substantive communications between the mediation session and Charter’s filing of the petition for arbitration, there is no way that Verizon could, in good faith, come to the conclusion that such issues were somehow deemed “closed” during those three days.

It is certainly true, as Verizon’s exhibits demonstrate, that Charter and Verizon exchanged proposed drafts with contract language that was similar in some respects. That alone, however, does not mean the parties finally resolved these issues, or that they agreed to “close” the issues during negotiations. During all of this time Charter considered, discussed, commented on, and offered revisions to Verizon’s proposed

resolution and contract language. However, in the end, Charter *did not agree to, or accept*, Verizon's proposals, either individually or in total.²

The fact that Charter considered Verizon's proposals (and even offered changes to them) does not mean it agreed to Verizon's proposed language. Instead, it demonstrates that Charter was negotiating in good faith by trying to find some form of Verizon's proposal that Charter could accept. Contract negotiations of this kind are necessarily a give and take process. Charter repeatedly sought modifications to Verizon's proposals in an effort to find an acceptable version of the same.

However, when it became clear that Verizon would not move away from its demand that Charter pay for portions of Verizon's fiber meet point, Charter decided that it could not accept the proposed language Verizon offered. At that point, Charter sought mediation of some of these issues and, when that proved unsuccessful, Charter petitioned the Department to arbitrate these unresolved issues. Throughout the time that this negotiation process continued, Charter made clear to Verizon that it believed issues remained open. Verizon's own words and deeds—including its participation in the mediation process—indicate that it believed the same to be true.

Also, Verizon's claim that Charter's petition identified issues that were never discussed during negotiations is simply not true. Several of the open issues in Charter's petition were discussed very early in the negotiations process, and others were discussed in concept later in the negotiations. As Verizon explained in its Appeal, those negotiations took place over a significant period of time and involved several different negotiators on both sides. That may explain why Verizon seems to forget that the issues

² Indeed, if Charter had in fact accepted Verizon's proposals then the Department would have before it an executed amendment (rather than a petition for arbitration).

identified in Charter's petition were discussed (even though those discussions may have occurred some time ago).

Moreover, during negotiations Charter made clear that it would consider individual issues, but reserved the right to agree or disagree on the entire draft amendment. This approach is quite common in negotiations of interconnection agreements, where both parties agree that no single issue is finally settled until the entire agreement is finally settled. Charter made that very point to Verizon's negotiators on several occasions. Charter simply never agreed to close, or resolve, the disputed issues between the parties, but instead continued to communicate its opposition to Verizon's proposals.

2) The Arbitrator Correctly Ruled That Charter's Actions Were Consistent With the Manner In Which These Contracts Are Routinely Negotiated in the Industry

Verizon also takes issue with the Arbitrator's decision that "Verizon appears to be confusing the terms 'issue' and 'contract language.'" (Arbitrator's Ruling at 5). Verizon claims that the decision could be construed as allowing parties "re-open an issue in its arbitration petition after it has closed the issue in negotiations." (Appeal at 7). Verizon's claim of error, though, relies on its misleading and ultimately incorrect assertion that these issues were in fact "closed" during negotiations. As demonstrated above, Charter never indicated that issues were closed and repeatedly informed Verizon's counsel otherwise.

Furthermore, Verizon seems to take the view that its "form" contract is deemed accepted in all respects unless the other party specifically and in writing opposes it. That is not what is contemplated by negotiations under Section 251(c)(1) and 252(a)(1). It is

quite common for some issues, as to which there is no meeting of the minds, to be set aside while more pressing issues are given attention. In such cases, the negotiation period may run out before the deferred issues are addressed.

Similarly, it is quite common for some issues to be tentatively resolved, contingent on a complete accord being reached on all issues. Then if a complete accord is not reached, the issues are still open. So if Verizon has been operating under the assumption that an issue is not “open” simply because it has not been discussed recently or in detail, that assumption is simply not true to the realities of the negotiation process.³

Moreover, as the Arbitrator recognized, Verizon seems to confuse disputed *issues* with disputed contract *language*. (Arbitrator’s Ruling at 5.) An “issue” can be open even if one or both parties have not yet formulated specific language to embody their preferred position. For example, Charter and Verizon disagree about the “issue” of whether Charter can be required to reach a traffic volume threshold before Verizon must establish a fiber meet point. The disagreement about that issue exists completely independently of whether Charter or Verizon has proposed specific language to the other embodying its position. And, it is equally true that either party may alter or revise its proposed (and presumptively disputed) contract language relating to that disputed issue. Thus, where one party offers new contract language, that does not mean that it raises a new “issue” in the negotiations.

The Arbitrator agreed on this question when she ruled that “Verizon appears to be confusing the terms ‘issue’ and ‘contract language.’” (Arbitrator’s Ruling at 5.) As the

³ Moreover, Section 252(b)(5) plainly contemplates that negotiations will continue even after an arbitration petition is filed. That cannot be squared with Verizon’s view.

Arbitrator explained, “a determination of those issues that are resolved in [negotiation] is not based whether the proposed contract language presented by the Petitioner in its Petition for Arbitration matches the most recent version discussed by the Parties.” (*Id.*) Thus, the Arbitrator rejects Verizon’s assertions that the exchange of contract language that is similar in some ways constitutes one or the other party’s assent or agreement to such language. Instead, as the Arbitrator explains, the proper “focus is on whether the petitioning party believes that the issues have been resolved.” (*Id.*) Clearly, as Charter demonstrated in Section III.A.1, above, Charter never believed that the issues had been resolve, and Verizon had no reasonable basis to believe that either.

B. The Arbitrator’s Ruling Properly Construes Applicable Law to Find That Charter Has the Right to Arbitrate Any Open Issue

Notably, in its Appeal, Verizon offers no legal authority to support its claim that the Arbitrator erred by ruling that Charter had a right to petition the Department to arbitrate open, unresolved issues with Verizon. In so doing Verizon ignores the numerous cases cited by the Arbitrator, and other cases around the country, that support the conclusion that 47 U.S.C. § 252(b) requires state commissions to arbitrate all open issues identified by a petitioning party.⁴

⁴ Verizon cites only to 47 U.S.C. 252 to suggest that a State Commission can only arbitrate “open” issues, and asserts that the issues in Charter’s petition are not open because Verizon mistakenly believed that Charter had accepted Verizon’s proposals. Verizon’s argument assumes what it is trying to prove. As demonstrated above, Charter never finally accepted Verizon’s proposed contract language, nor did the parties ever exchange a final draft much less sign one or even indicate in writing that agreement existed or was imminent. Therefore, the parties never resolved or closed the issues identified in Charter’s petition, and those issues are properly characterized as “open.” For that reason Charter’s actions are entirely consistent with Section 252(b)(1) and other provisions of law governing negotiations and arbitration of interconnection agreements.

As the Arbitrator recognized, the wealth of authority on the appropriate construction of what constitutes an open issue supports the conclusion that the Department should arbitrate the issues set forth in Charter's petition. That approach was adopted by the federal district court in Florida when that court concluded that "[t]he statutory term 'any open issues' makes clear that the right to arbitrate is as broad as the freedom to agree; any issue on which a party unsuccessfully seeks agreement may be submitted to arbitration."⁵ As the court explained, where one party (in this case BellSouth) "chose ... not to agree voluntarily" to a particular provision "this became an open issue" that the other party (in this case MCI) was entitled to submit to arbitration.⁶ Under that scenario, when the Florida PSC chose to act as the arbitrator of such issues "its obligation was to resolve 'each issue set forth in the petition and the response, if any.'"⁷

In the same way, when Charter decided not to agree to Verizon's proposed contract language (and communicated the same to Verizon), the issue was necessarily still open and unresolved. As such, the Arbitrator properly concluded that once Charter identified the issue in its petition, the Department was duty-bound under 47 U.S.C. § 252(b)(4)(C) to arbitrate and resolve that open issue. This approach is consistent with

⁵ *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 112 F. Supp. 2d 1286, 1297 (N.D. Fla. 2000); aff'd on other grounds, *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002). See also *AT&T Communications of the Southern States, Inc. v. GTE Florida, Inc.*, 123 F. Supp. 2d 1318, 1328 (N.D. Fla. 2000) (same).

⁶ *Id.*

⁷ *Id.* (citing 47 U.S.C. § 252(b)(4)(C)).

other federal district courts construing the scope of the obligation to arbitrate “open issues” identified by a petitioning party.⁸

Moreover, as the Arbitrator noted, this broad construction is also consistent with the Department’s own precedent. In prior proceedings the Department has determined that it is appropriate to arbitrate all issues raised in a petition for arbitration, as well as all issues raised by the responding party in its answer to the petition.⁹ The Department should not depart from that precedent, and well established federal law, to overturn the Arbitrator’s findings and conclusion that the issues identified in Charter’s petition are open issues that were never closed during negotiations, and are properly subject to arbitration by the Department.

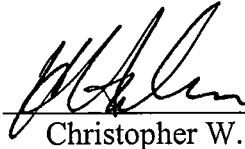
V. CONCLUSION

Charter requests that the Department deny Verizon’s request for relief in its Appeal; affirm the Arbitrator’s ruling on Verizon’s motion to dismiss; and, complete this proceeding by arbitrating the open issues identified in Charter’s petition.

⁸ See, e.g. *US West Communications, Inc. v. Minnesota PUC*, 55 F.Supp.2d 968, 977-78 (D. Minn 1999) (state commission could not impose requirements of its own choosing and instead was limited to arbitrating open issues, which constituted those issues that were raised by the parties themselves in the petition and response).

⁹ *Consolidated Arbitration*, D.T.E. 04-33, Procedural Order at 23 (Mass DTE, Dec. 15, 2004).

Respectfully submitted,
Charter Fiberlink MA-CCO, LLC

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Its Attorneys

Dated: September 13, 2006

CHARTER EXHIBIT 1

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May 8, 2006

VIA FEDERAL EXPRESS

Massachusetts Department of Telecommunications and Energy
Telecommunications Division
One South Station
Boston, MA 02110
Attn: Mr. Mike Isenberg

Re: Request for Mediation Pursuant to 47 U.S.C. § 252

Dear Mr. Isenberg:

Charter Fiberlink MA-CCO, LLC ("Charter") hereby requests mediation of disputed issues that have arisen in negotiations between Charter and Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"). Charter makes this request pursuant to Section 252 of the Communications Act of 1934¹ ("Act") and asks the Department of Telecommunications and Energy ("DTE") to mediate the disputed issues that have arisen in negotiations between Charter and Verizon over the terms of an amendment to establish a fiber meet point interconnection arrangement in Massachusetts and other states in which Charter and Verizon interconnect.

I. Background

Charter and Verizon have been actively negotiating the terms of an amendment to their interconnection agreement since December of 2005.² The amendment at issue sets forth the terms and conditions of the establishment of a fiber meet point interconnection arrangement ("Fiber Meet") between Charter and Verizon ("the Parties"). A Fiber Meet point arrangement is a method of interconnection whereby two parties interconnect their network facilities via fiber optic equipment at a designated meet point. Once established, the Fiber Meet serves as the Parties' point of interconnection in each LATA.

¹ 47 U.S.C. § 252.

² Indeed, discussions between the two companies pre-dated that time but negotiations began in earnest on approximately December 14, 2005.

Negotiations to date have centered on a document proposed by Verizon as an amendment to the Parties' current interconnection agreement. Although the parties have agreed upon the majority of terms in Verizon's proposed amendment, there is one particular section that raises several disputed issues that remain unresolved. The section in question (Section 2.1) addresses the conditions under which Charter may request that Verizon enter into a Fiber Meet interconnection arrangement with Verizon.

To assist the DTE in its mediation efforts, and pursuant to 47 U.S.C. § 252(b), Charter sets forth below a summary of the disputed issues and each Party's current position with respect to those issues.³ In addition, the Parties have been exchanging a draft document which the Parties have used to negotiate contract language. Charter will provide a copy of that document to the DTE, or if the DTE believes it will assist its mediation efforts Charter will prepare a matrix which reflects each party's proposed contract language on the issues described below.

Mediation is necessary here because the Parties cannot agree upon several important questions. Broadly speaking, those questions are whether Verizon can condition Charter's right to request a Fiber Meet arrangement and whether Charter should pay Verizon for Verizon's costs of building a Fiber Meet arrangement. Charter requests that the Commission mediate the disputed issues described herein, rule in favor of Charter with respect to such issues, and order the Parties to adopt Charter's proposed language.

II: The Parties

Charter is a Delaware Limited Liability Company, duly authorized to conduct business in Massachusetts, with its principal offices in St. Louis, Missouri at 12405 Powerscourt Drive, St. Louis, Missouri, 63131. Charter is authorized to provide competitive services within the State of Massachusetts pursuant to a CPCN issued on December 20, 2003.

Verizon is an incumbent provider of local exchange services in Massachusetts, operating as an incumbent local exchange carrier throughout the State. Verizon maintains offices within Massachusetts at the following address: 185 Franklin Street, 13th Floor, Boston, Massachusetts 02110-1585. Charter and Verizon are parties to an effective interconnection agreement in the State of Massachusetts, as filed with the DTE on April 4, 2004 and approved by the DTE on May 10, 2004.

Charter's representatives during negotiations and in this proceeding are Carrie L. Cox, and Paul Dunphy of Charter Communications, Inc., 12405 Powerscourt Drive, St. Louis, Missouri, 63131; and K.C. Halm of Cole, Raywid & Braverman, L.L.P. 1919 Pennsylvania Ave., N.W., Suite 200, Washington, D.C. 20006. Verizon's representatives during negotiations have been Steve Kanitra, Verizon Communications, Inc., 19845 US 31 North Westfield, IN 46074; and Jim Pachulski, TechNet Law Group. 1100 New York Ave., N.W., Suite 365 Washington, DC 20005.

³ The issues described below represent the major issues in dispute at this time. There may, in fact, be additional issues that arise as a result of continued negotiations and mediation between the Parties. Charter reserves the right to raise any additional issues during the pendency of that process.

III. Jurisdiction and Applicable Legal Standard

The DTE has jurisdiction over Charter's request for mediation pursuant to Section 252 of the Act. Specifically, under 47 U.S.C. § 252(a)(2), any party negotiating an agreement may at any point in the negotiation ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

This mediation should be conducted under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission ("FCC"), and applicable statutes, rules and orders of the DTE. Accordingly, the DTE should mediate the unresolved issues identified here (and any others identified by the Parties) and assist the Parties in establishing rates, terms, and conditions that meet the requirements of applicable federal and State law.

IV. Negotiations and Resolved Issues

Negotiations have continued for approximately four and a half months and have produced an apparent resolution of a significant number of issues in Verizon's proposed amendment. Specifically, the Parties have reached an agreement with respect to a number of provisions in the amendment including those governing: the use of spare capacity to implement Fiber Meet arrangements; physical limitations on the distance of such Fiber Meet arrangements from Verizon's Wire Centers; the types of traffic to be exchanged over a Fiber Meet arrangement; the inclusion of certain types of traffic in future forecasts; and, the definitions setting forth the meaning of certain terms used in the Amendment.

In addition, the parties have reached an apparent agreement on most of the technical specifications governing the use and deployment of these Fiber Meet arrangements including provisions governing the use of fiber network interface devices; transmission interfaces; power standards; multiplexing requirements; testing requirements; connecting facility assignments; slot assignment allocations and inventory, provisioning, maintenance, surveillance and restoration of the Fiber Meet arrangements.

V. Unresolved Issues and the Positions of the Parties

There are, broadly speaking, two major unresolved issues. The first concerns the circumstances by which Charter can request a Fiber Meet arrangement. The second concerns each Party's financial responsibilities for the cost of facilities on their respective side(s) of any future Fiber Meet arrangement.

With respect to the first unresolved issue, although the Parties' current interconnection agreement specifically provides that each Party will provide to the other "interconnection at ... a fiber meet point" Verizon has insisted that such an arrangement be established pursuant to an amendment to the Parties' agreement. Although Charter does not necessarily agree that an amendment is necessary to effectuate a Fiber Meet arrangement it has agreed to consider Verizon's proposed amendment in the interests of comity. However, as explained in greater

detail below, Verizon's amendment attempts to limit Charter's right to request a Fiber Meet arrangement to those circumstances where Charter is already exchanging a significant amount of traffic with Verizon. In the alternative, if Charter wishes to proceed to a Fiber Meet arrangement where no traffic is being exchanged Verizon expects Charter to provide Verizon a letter of credit (in an undisclosed amount) to cover *Verizon's costs* of building facilities on its side of the Fiber Meet arrangement. Charter objects to both of those limitations.

With respect to the second unresolved issue, Verizon has proposed that Charter pay for the installation and operation of Verizon's Fiber Meet arrangement facilities in a number of circumstances. Charter strenuously objects to this proposal as well. Summarized below are an explanation of each unresolved issue and a description of each Party's position on such issues.

A) Unresolved Issue 1: Can Verizon condition Charter's right to request a Fiber Meet arrangement to be used to interconnect and exchange traffic?

The issue here is whether Verizon can impose conditions on Charter's ability to request a Fiber Meet arrangement in a particular market.⁴ Broadly speaking, Verizon proposes to condition Charter's right to establish a Fiber Meet arrangement upon certain criteria. Charter, in contrast, seeks the right to establish a Fiber Meet arrangement without such conditions and upon reasonable request.

Verizon's Position

Verizon takes the position that Charter may not establish a Fiber Meet arrangement unless certain conditions are first satisfied. Initially, Verizon proposed that Charter's right to establish a Fiber Meet arrangement be conditioned upon the existence of an aggregate amount of traffic between the two networks equivalent to that which is carried over a DS3 facility (i.e. a DS3's worth of traffic). In other words, Verizon would not agree to a new Fiber Meet arrangement unless Charter is already exchanging a DS3's worth of traffic with Verizon.

After Charter's strenuous objection to this limitation Verizon modified its proposal. Under its revised proposal Verizon would permit Charter to establish a Fiber Meet arrangement only if specific conditions, outlined below, are satisfied. Specifically, Verizon now proposes that Charter can request a Fiber Meet arrangement *only* if:

(1) Charter is already leasing special access facilities from Verizon in a particular market and exchanging traffic equal to seventy percent (70%) of a DS3's worth of traffic, and can demonstrate a traffic growth rate of eight percent (8%); or

(2) Charter enters a new market and seeks to lease special access facilities from Verizon for purposes of interconnection, but no such facilities are available; or

⁴ For these purposes a market is equivalent to a LATA.

(3) Charter enters a new market and forecasts a DS3's worth of traffic within the next twelve (12) months, and Charter agrees to provide Verizon a letter of credit from which Verizon can draw from to cover Verizon's costs of building a Fiber Meet arrangement.

Charter's Position

Charter's position is that it should be able to establish a Fiber Meet arrangement with Verizon without having to first satisfy any of the conditions proposed by Verizon. Indeed, Charter believes it is entitled to obtain meet point interconnection under the current interconnection agreement with Verizon without *any* limitation as to capacity and timing. Nevertheless, Charter is willing to enter into an amendment with Verizon that establishes Charter's right to initiate a Fiber Meet arrangement under certain reasonable conditions. Specifically, Charter should be able to establish a Fiber Meet with Verizon upon entry into a new market if Charter forecasts that it expects to exchange a DS3 or more of traffic with Verizon over the next twelve (12) months in the affected market. Put more simply, Charter believes it is entitled to a Fiber Meet arrangement with Verizon in those markets where it expects to exchange a DS3's worth of traffic with Verizon within one year.

Charter's position is consistent with the terms of the parties' current interconnection agreement, and the material terms of agreements between Verizon and other similarly situated entities in Massachusetts. In contrast, there is *no* legal or contractual basis for Verizon's position that Charter's right to request a Fiber Meet arrangement should be limited in the manner that Verizon proposes. As such, Charter respectfully requests that the DTE mediate this disputed issue and order the Parties to establish an amendment that does not limit Charter's right to establish a Fiber Meet arrangement with Verizon.

B) Unresolved Issue 2: Should each party be responsible for the cost of network facilities and equipment on their respective side of the Fiber Meet arrangement?

The question here is whether each Party should be responsible for the cost of facilities on its respective side of the Fiber Meet arrangement. Verizon's position, generally, is that Charter should pay Verizon for certain network equipment on Verizon's side of the Fiber Meet arrangement if Charter requests a Fiber Meet arrangement at any time before the parties exchange a DS3's worth of traffic. Charter's position is that each party should always bear their own respective costs of network equipment necessary to establish a Fiber Meet arrangement. In other words, each party should be responsible for the cost of equipment on their own side of the Fiber Meet arrangement.

Verizon's Position

Verizon takes the position that Charter should compensate Verizon for the cost of certain network facilities deployed by Verizon to establish a Fiber Meet arrangement. Verizon proposes that Charter compensate Verizon for the cost of constructing a Fiber Meet arrangement if the Parties do not exchange an amount of traffic equivalent to a DS3. Specifically, Verizon proposes that Charter compensate Verizon for such costs by one of two methods:

(1) If Charter requests a Fiber Meet arrangement and the Parties have not exchanged any traffic then Charter must compensate Verizon by issuing a letter of credit, in an amount determined by Verizon, from which Verizon may draw to cover *Verizon's costs* of network equipment and facilities on *Verizon's side* of the Fiber Meet arrangement.

Or

(2) If Charter requests a Fiber Meet arrangement and the Parties are currently exchanging less than a DS3's worth of traffic then Charter must pay Verizon the equivalent of Verizon's tariff rates for multiplexing equipment, channel terminations, and "applicable" fiber mileage.⁵ Charter must pay such charges until traffic between Verizon and Charter reaches an amount equivalent to a DS3 facility.

Charter's Position


Charter takes the position that each Party should be responsible for the cost of facilities on its side of the Fiber Meet arrangement. This principle of cost responsibility is consistent with, indeed required by, the Parties' current interconnection agreement and applicable law. The Fiber Meet arrangement will (upon completion) be designated as the Parties' single point of interconnection ("POI") within each LATA in Massachusetts. Under the relevant terms of the Parties' current interconnection agreement each party is responsible for the costs of the network facilities on its side of the POI. Therefore, once the Fiber Meet becomes the POI each Party should be responsible for the cost of network facilities on its side of the Fiber Meet.

Charter currently pays Verizon approximately \$15,000 per month in network transport costs in Massachusetts due to the lack of a Fiber Meet arrangement. As such, Charter believes that Verizon has little incentive to reach agreement with Charter because these payments will be eliminated or significantly reduced once a Fiber Meet arrangement is in place. Accordingly, Charter requests that the DTE immediately initiate mediation of these and other disputed issues in the pending negotiations between Charter and Verizon over the terms of a Fiber Meet arrangement amendment.

Charter's counsel and representatives are ready to meet with the DTE's staff and Verizon representatives to resolve these issues. Please contact the undersigned counsel for Charter to arrange for such meetings. Thank you.

⁵ Verizon has not clearly specified what it deems to be "applicable" fiber mileage, and what portion of such fiber is subject to compensation. However, Charter assumes that Verizon will take the position that Verizon is entitled to make such determinations on an ad hoc basis.

Sincerely,



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Its Attorneys

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Jim Pachulski, Esq., TechNet Law Group
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CHARTER EXHIBIT 2



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May 22, 2006

Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

ATTN: Mr. Michael Isenberg

RE: Charter Request for Mediation Pursuant to 47 U.S.C. § 252

Dear Mr. Isenberg:

Verizon Massachusetts Inc. ("Verizon MA") hereby responds to the request of Charter Fiberlink MA-COO, LLC ("Charter") for mediation of disputed issues in negotiations for an amendment to the parties' interconnection agreement that would govern fiber meet arrangements in Massachusetts. Although the negotiations for a fiber meet amendment have involved other states in which the parties' affiliates have an interconnection agreement, Verizon's response to Charter's mediation request is limited to a fiber meet amendment for Massachusetts. Verizon objects to Charter's request that the Department mediate a fiber meet amendment for "other states in which Charter and Verizon interconnect."¹

The principal issues in dispute concern the minimum traffic volume exchanged between the parties that would warrant the deployment of a fiber meet arrangement. The smallest fiber optic system that could be deployed in a fiber meet arrangement is an OC3 system, which could cost as much as \$75,000. An OC3 fiber optic system has the capacity to handle approximately three (3) DS3's worth of traffic volume, or approximately 16,800,000 minutes of use per month. Consistent with sound engineering principles, Verizon MA would not deploy an OC3 in its own network unless it had at least one (1) DS3's worth of traffic volume. Verizon MA has therefore

¹ See Letter from KC Halm, attorney for Charter Fiberlink MA-COO, LLC, to Mr. Mike Isenberg, Massachusetts Department of Telecommunications and Energy, at 1 ("Charter Mediation Request").

proposed to Charter that the parties could deploy a fiber meet arrangement where they are already exchanging at least one DS3's worth of traffic.

Charter would like Verizon MA to deploy fiber meet arrangements even where the parties have not exchanged even a single minute of traffic. Although Verizon MA has no legal obligation to deploy a fiber meet arrangement in this situation, Verizon MA has proposed terms under which the parties could deploy a fiber meet arrangement prior to the parties exchanging a DS3's worth of traffic volume. Under these terms, if Charter's traffic volumes do not reach forecasted levels and Verizon MA's investment in fiber meet facilities is unused or underutilized, Charter would bear certain payment and financial assurance obligations. It is appropriate for Charter to bear these obligations because only Charter controls when and whether traffic volumes will reach a DS3 level. There is no reason why Verizon MA should bear the cost of unused or inefficiently utilized interconnection facilities.

Negotiation History.

Verizon has been negotiating fiber meet amendments with Charter since at least the middle of last year. In June 2005, Verizon provided to Charter's counsel, Leslie Genova, a draft fiber meet amendment for the state of South Carolina. Nearly six weeks later, Verizon received a voice message from Ms. Genova indicating that Charter would not sign a fiber meet amendment and that Charter intended to operate under the terms of its interconnection agreement.

In August 2005, Ms. Genova restarted negotiations for a fiber meet amendment with Verizon. She proposed language changes for Section 2.2 regarding distance limitations on new fiber construction. At that time, she did not raise any objections to the language in Section 2.1, including the DS3 traffic level threshold. In September 2005, Verizon provided a counterproposal to Charter that addressed Ms. Genova's proposed changes on the distance limitation.

In October 2005, Ms. Genova first proposed that Verizon agree to build a fiber meet arrangement based solely on Charter's forecast that traffic volumes would reach the DS3 level within 12 months. She also indicated that negotiations were for all states where the parties are interconnected and that Charter wanted to execute amendments quickly in Massachusetts and California.²

In November 2005, Ms. Carrie Cox replaced Ms. Genova as Charter's negotiator and the following month, Mr. Halm began assisting Ms. Cox in these negotiations. At their request,

² Charter says that it "does not necessarily agree that an amendment is necessary to effectuate a Fiber Meet arrangement." Charter Mediation Request at 3. However, the parties interconnection agreement states that "the Parties may agree to establish a Fiber Meet arrangement" and that "[t]he establishment of any Fiber Meet arrangement is expressly conditioned upon the Parties' reaching *prior written agreement* on routing, appropriate sizing and forecasting, equipment, ordering, provisioning, maintenance, repair, testing, augment, and compensation, procedures and arrangements, reasonable distance limitations, and on any other arrangements necessary to implement the Fiber Meet arrangement." Interconnection Agreement between Charter and Verizon, Interconnection Attachment, Section 3.1, 3.2 (emphasis supplied).

Verizon provided, in December 2005, a counterproposal that would allow Charter to request a fiber meet arrangement based on Charter's good faith forecast showing at least one (1) DS3's worth of traffic volume within 12 months. Under Verizon's counterproposal, Charter would provide an assurance of payment to cover Verizon's cost of the fiber meet arrangement in the event traffic volumes did not reach the DS3 level within 12 months.

For the next several months, Verizon and Charter held conference calls and exchanged drafts of the fiber meet amendment. During these negotiations, Verizon (in response to Charter's request) revised its draft amendment to expand the circumstances under which the parties could establish a fiber meet arrangement before the traffic volumes exchanged between the parties have reached the DS3 level. Verizon understands that Charter has agreed to the other provisions of Verizon's most recent draft amendment.

Unresolved Issues.

The principal unresolved issues concern the minimum traffic volumes exchanged between the parties that would warrant the investment and expense of a fiber meet arrangement. As previously explained, the smallest fiber optic system that could be deployed in a fiber meet arrangement is an OC3 system. In order to deploy an OC3 fiber optic system in a fiber meet arrangement with Charter, Verizon MA must purchase OC3 equipment and install that equipment in one of its central offices. Verizon MA must then connect that equipment to spare fiber facilities that extend to or near the agreed-upon fiber meet point(s). Verizon MA then needs to purchase a fiber network interface device ("FNID") and install it at one of the meet points. If Verizon MA's spare fiber already extends to the meet point(s), Verizon MA will connect it to Verizon MA's side of the FNID(s). If Verizon MA's spare fiber does not extend to the meet point(s), Verizon MA will need to run additional fiber to connect its existing spare fiber facilities to the FNID(s). The cost of deploying an OC3 fiber meet in such a fiber meet arrangement could run as much as \$75,000.

An OC3 fiber optic system has the capacity to handle approximately three (3) DS3's worth of traffic volume, or approximately 16,800,000 minutes of use per month. From a network engineering perspective, it is not efficient to use an OC3 fiber optic system for less than a DS3's worth of traffic volume (*i.e.*, one-third of the capacity of the OC3 system). In Verizon MA's own network planning, Verizon MA does not consider deploying an OC3 system until it has at least one (1) DS3's worth of traffic volume.

It would not be an efficient use of network resources to deploy an OC3 fiber optic system in a fiber meet arrangement where the traffic volumes are below a DS3 level. Therefore, consistent with sound network engineering principles and Verizon MA's own network planning, Verizon MA has proposed to Charter that the parties could deploy a fiber meet arrangement where they are already exchanging at least one (1) DS3's worth of traffic. In this situation, neither party would charge the other party for use of the fiber meet arrangement to exchange local traffic. The only charge that would be applied to the exchange of local traffic would be reciprocal compensation.

Charter does not want to be bound by sound network engineering principles in the deployment of fiber optic systems in fiber meet arrangements. Rather, Charter wants the ability to require Verizon MA to incur the cost of deploying fiber optic systems for fiber meet arrangements even where the parties have not exchanged even a single minute of traffic. And Charter wants Verizon MA to bear the cost of deploying an OC3 fiber optic system even if the parties ultimately exchange no traffic or only a trickle of traffic over that system.

It is Charter, not Verizon MA, that controls traffic volumes. If Verizon MA and Charter were to deploy an OC3 system for a fiber meet arrangement, Charter would be in complete control of the traffic volumes exchanged over that arrangement. The timing and success of Charter's efforts to market telephony services will determine the traffic volumes exchanged over the fiber meet arrangement. If Charter's marketing efforts are delayed or are not successful, there might be no traffic exchanged over the fiber meet arrangement or the traffic volumes might be only a fraction of a DS3 level. In this situation, an OC3 fiber optic system would be an inefficient method of exchanging traffic. It would be like using a fire hose to water house plants.

If Verizon MA were to deploy a fiber optic system in a fiber meet arrangement with Charter, those facilities would be dedicated to Charter's traffic. Verizon MA could not use those facilities to serve another customer or carrier. If Charter did not rapidly and successfully market its telephony services, there would be little or no traffic carried over those facilities. In this situation, traffic volumes would not produce sufficient reciprocal compensation revenues to warrant the cost of the fiber meet facilities. Nor would those facilities be used to complete calls from Verizon MA's customers to Charter's customers if Charter has no customers.

Although Verizon MA has no legal obligation to deploy an OC3 fiber optic system in a fiber meet arrangement where the parties are not already exchanging at least a DS3's worth of traffic volume, Verizon MA has proposed terms under which the parties could do so prior to exchanging that volume of traffic. Under these terms, Charter would bear certain payment and financial assurance obligations if the traffic volumes do not reach the DS3 level within a reasonable period of time. There is no reason why Verizon MA should bear the cost of unused or inefficiently utilized OC3 network interconnection facilities.

Verizon MA has proposed three scenarios under which the parties could deploy an OC3 fiber optic system in a fiber meet arrangement before traffic volumes have reached a DS3 level:

1. Where the parties are already exchanging at least 70 percent of a DS3's worth of traffic, the traffic volumes have grown at least 8 percent over the last three months, and Charter has provided a good faith forecast showing a DS3's worth of traffic within 12 months, Verizon MA would be willing to deploy a fiber meet system subject to certain payment obligations. Under Verizon MA's proposal, if the traffic volumes reach a DS3 level within a month after the fiber meet arrangement is turned up, neither party would charge the other party for use of the fiber meet arrangement to exchange local traffic. The only charge that would be applied to the exchange of local traffic would be reciprocal compensation. However, for any month in which the traffic volumes do not reach a DS3 level, Verizon MA could charge Charter its tariffed rate for a DS3 channel termination, multiplexing and associated transport mileage, in addition to

reciprocal compensation. This charge would serve as partial compensation for the inefficient utilization of Verizon MA's fiber optic facilities and equipment.

2. Where Charter has provided a good faith forecast showing a DS3's worth of traffic and ordered special access facilities for interconnection, but Verizon MA does not already have such facilities available, Verizon MA would be willing to deploy a fiber meet system subject to certain payment obligations. In this situation, interconnection facilities must be deployed in order for the parties to exchange traffic because there are no such facilities available. Under Verizon MA's proposal, if the traffic volumes reach a DS3 level within twelve (12) months after the fiber meet arrangement is turned up, neither party would charge the other party for use of the fiber meet arrangement to exchange local traffic. The only charge that would be applied to the exchange of local traffic would be reciprocal compensation. However, if the traffic volumes do not reach a DS3 level within a year after deploying the fiber meet arrangement, Verizon MA could charge Charter its tariffed monthly rate for a DS3 channel termination, multiplexing and associated transport mileage, in addition to reciprocal compensation. This charge would serve as partial compensation for the inefficient utilization of Verizon MA's fiber optic facilities and equipment.

3. Where Charter has provided a good faith forecast showing a DS3's worth of traffic and Verizon MA already has such facilities available, Verizon MA would be willing to deploy a fiber meet system only if Charter provided financial assurance in the form of a letter of credit or cash deposit. In this situation, there are existing interconnection facilities that could be used until traffic volumes reach a DS3 level. Under Verizon MA's proposal, if the traffic volumes reach a DS3 level as forecasted by Charter, neither party would charge the other party for use of the fiber meet arrangement to exchange local traffic. The only charge that would be applied to the exchange of local traffic would be reciprocal compensation. However, if the traffic volumes do not reach a DS3 level within twelve (12) months after deploying the fiber meet arrangement, Verizon MA could recover from Charter's financial assurance Verizon MA's expenses and investment in the fiber meet arrangement in addition to reciprocal compensation.

Verizon MA's proposals are fully consistent with the FCC's rules on interconnection. As a preliminary matter, the FCC's rules call for interconnection to occur "[a]t any technically feasible point within the incumbent LEC's network" 47 C.F.R. § 51.305. Verizon MA satisfies this requirement by making collocation arrangements and interconnection facilities and services available under the parties' interconnection agreement and Verizon MA's tariffs. These alternatives are available without minimum traffic volumes. In fact, Charter is currently using these arrangements to exchange traffic with Verizon MA.

The FCC has also indicated that incumbent local exchange carriers need only make a "reasonable accommodation of interconnection" for a meet point arrangement. In the *Local Competition Order*, the FCC said that "[i]n a meet point arrangement, the 'point' of interconnection for purposes of sections 251(c)(2) and 251(c)(3) remains on 'the local exchange carrier's network' . . . and the limited build-out of facilities from that point may then constitute

Mr. Michael Isenberg
May 22, 2006
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an accommodation of interconnection.”³ In this context, the FCC indicated that “the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.” *Id.*

Here, Verizon MA’s proposal to deploy an OC3 fiber optic system in a fiber meet arrangement where the parties are exchanging a DS3’s worth of traffic is a “reasonable accommodation of interconnection” because it is consistent with sound network engineering principles and Verizon MA’s own network planning practices. Verizon MA is not required to incur the cost of deploying an OC3 fiber optic system where the traffic volumes exchanged between the parties do not warrant the use of such a system.

In addition, Verizon MA’s proposal to impose certain payment and financial assurance obligations on Charter where no or little traffic is exchanged between the parties is likewise a “reasonable accommodation of interconnection.” Only Charter has control of the traffic volumes exchanged by the parties. It is therefore appropriate for Charter to bear at least some of the cost of choosing an expensive form of interconnection that is not justified by the traffic volumes generated by Charter.

Verizon MA is ready to meet with the Department and Charter to attempt in good faith to resolve these issues. Please contact me if the Department wishes to conduct such a meeting or would like other information on the issues raised by Charter’s request.

Sincerely,



Alexander W. Moore

cc: Mary L. Cottrell, Secretary
April Mulqueen, Esquire, Assistant Director – Telecommunications Division
K.C. Halm, Esquire
Carrie Cox, Esquire, Charter Fiberlink, LLC
Paul Dunphy, Charter Fiberlink, LLC
Steve Kanitra, Verizon Communications
Jim Pachulski, Esquire, TechNet Law Group

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 ¶553 (1996) (*Local Competition Order*) (subsequent history omitted).

CERTIFICATE OF SERVICE

I, Gina Lee, hereby certify that on September 14, 2006, I served a true and correct copy of the foregoing Charter Fiberlink MA-CCO, LLC's Reply to Verizon Appeal of Arbitrator's Ruling Denying Verizon's Motion to Dismiss via Federal Express and electronic copy upon the following:

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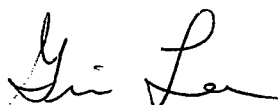
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